IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.09.2007

Coram :

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN
and
THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) No.244 of 2004

Chandrakant N.Tolia .. Appellant

versus

The Assistant Commissioner of
Income Tax, City Circle I(1),
Chennai. .. Respondent

Tax Case Appeal preferred under section 260A of the Income tax Act, 1961 against the order dated 26.08.2002 made in ITA No.1352/Mds/98 by the Income Tax Appellate Tribunal, 'D' Bench, Madras, against the order dated 13.05.98 made in ITA.No.223/97-98 by the Commissioner of Income Tax (Appeals) IX, Chennai.

For Appellant : Mr.Venkatanarayanan

For Respondent : Mr.T.Ravikumar,
Jr. Standing Counsel for Income Tax

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN, J.)

The assessee has filed this appeal framing the following questions of law :

1. Whether on the facts and in the circumstances of the case, the Tribunal was correct in confirming the intimation issued in terms of Section 143(1)(a) of the Act?
2. Whether on the facts and in the circumstances of the case, the Tribunal was correct in confirming the said intimation in spite of the Board circular reported in 209 ITR 75?

2. The assessee owns an immovable property at No.7, Arulambal Street, T.Nagar, Chennai. It is stated that the same was used for self-occupation and hence, there was no income assessable under the head "income from house property". The assessee had taken the property at

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532, Mount Road, Chennai, on rental basis. This had been sub-let to a number of other concerns from whom rents were collected. In the return filed for the Assessment Year 1996-97, the assessee admitted a rental income of Rs.1,20,000/- and deducted therefrom Rs.1,08,000/- being rent paid to the landlord thereby returning a balance of Rs.12,000/- under the house property. In the return filed by the assessee, the same had been shown as income from the property from No.7, Arulambal Street, which admittedly, was in self-occupation. As such, no income assessable from the house property was permitted. In the proceedings initiated under Section 143(1)(a), the Assessing Authority made a prima facie adjustment rejecting the said claim and granted deduction under Section 24; thereby re-fixed the income from the property at Rs.96,000/-.

3. Aggrieved by the said order, the assessee preferred appeal before the Commissioner of Income Tax (Appeals), who, by order dated 13.05.1999, held that since the assessee had returned the income as income from the house property, he could not claim deduction of Rs.1,08,000/- being the rent paid in respect of the said property. On the facts disclosed prima facie in the returns, the appellate authority confirmed the order of the Assessing Officer.

4. On further appeal by the assessee, the Tribunal rejected the same on the ground that the provisions of law being clear on the point of admissibility of deduction of rent received from the property specially in a case where the assessee himself had shown the income under the head "income from house property", the order of the Commissioner of Income Tax (Appeals) could not be faulted with. The aggrieved assessee is on appeal before this Court.

5. Learned counsel for the assessee pointed out that the property at Arulambal street was a self-occupied property owned by the assessee. The assessee claimed that he had paid Rs.1,08,000/- towards rent for the property at Mount Road on lease and that he had received the rent on sub lease at Rs.1,20,000/- and therefore, the assessee returned the balance as income from the house property. Learned counsel for the assessee stated that in the return of income from the property, it had been wrongly stated by inadvertence that the same was from the property of the assessee at Arulambal Street which was under self-occupation. The details filed along with the return clearly showed that the said income was earned in respect of the Mount Road property taken on lease.

6. Learned counsel for the assessee pointed out that in the context of the facts disclosed in the statement accompanying the return as to the income from the property taken on lease but sub-let, the return as regards the income ought to have been read together with the enclosure which disclosed the true state of affairs and there was no question of making prima facie adjustment; as such, the officer should have accepted the return without any prima facie adjustment. He further placed reliance on the circular of the Central Board of Direct Taxes dated 24.08.1994 and submitted that even though the scope of Section 143 (1)(a) is limited, yet, on the strength of the circular explaining the

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provisions contained therein, the Income Tax Officer should have accepted the return without making any prima facie adjustment therein.

7. Learned standing counsel for the Revenue supported the orders of the authorities below that given the scope of Section 143(1)(a), the return had been considered on the basis of what had been disclosed therein.

8. We agree with the learned counsel for the assessee.

9. The relevant provisions of Section 143(1)(a), as it then stood prior to the substitution by the Finance Act, 1999 with effect from 1.6.1999, reads as follows:

> "143(1)(a). Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, --
> (i) if any tax or interest is found due on the basis of such return, after adjustment of any tax deducted at source, any advance tax paid and any amount paid otherwise by way of tax or interest, then, without prejudice to the provisions of sub-section (2), an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under section 156 and all the provisions of this Act shall apply accordingly; and
> (ii) ...
> provided that in computing the tax or interest payable by, or refundable to, the assessee, the following adjustments shall be made in the income or loss declared in the return, namely:-
> (i) any arithmetical errors in the return, accounts or documents accompanying it shall be rectified;
> (ii) any loss carried forward, deduction, allowance or relief, which, on the basis of the information available in such return, accounts or documents, is prima facie admissible but which is not claimed in the return, shall be allowed;
> (iii) any loss carried forward, deduction, allowance or relief claimed in the return, which, on the basis of the information available in such return, accounts or documents, is prima facie inadmissible, shall be disallowed ....."

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10. A reading of the provisions show that when a note is annexed to the return filed, the contents of the statement or the note need to be considered as part and parcel of the return filed before making any adjustment in the liability. Hence, when the Income Tax Officer proceeded with the return, fairness requires that the Assessing authority should have considered the statement filed along with the return before proceeding further under Section 143 (1)(a).

11. In the background of the statement filed disclosing the facts as regards the leasing of the property, it goes without saying that the Assessing Authority should have considered the return along with the statement in proper perspective before proceeding with the prima facie adjustment in this case. A reading of the provisions under Section 143(1)(a) leaves no room for doubt that the return filed along with the documents or accounts merit consideration and prima facie adjustment must be with reference to a claim which is clearly and patently inadmissible on the very face of things disclosed in the return along with the documents.

12. The Central Board of Direct Taxes issued a circular elaborating the scope of a prima facie disallowances under Section 143 (1)(a) in Circular No.689 dated 24.8.1994 (209 ITR Statute 75). The circular touches on the scope of prima facie disallowance under Section 143(1)(a) and has given types of claims in respect of which prima facie disallowances shall be made. The circular gives the guidelines as to the matters which call for prima facie disallowance. A perusal of the examples given clearly show that if the information available in the return of income or accounts or documents clearly show the correct facts, then the claim of the assessee should not be rejected. However, where a claim is made for deduction and the information available in the return of income or accompanying accounts or document shows that the claim could not be sustained under any of the provisions of the Act, then the claim merits to be disallowed as prima facie adjustment.

13. Going by the facts stated in the Tribunal's order, it is clear that the assessee had returned Rs.12,000/- as income from the property at Arulambal Street; yet, the details filed along with the return clearly showed that the assessee was in self-occupation of the property owned by him situate at Arulambal Street. Hence, there was nil income. If at all any income is received from the property, it is only from the one taken on lease at Mount Road. Hence, in the background of the circular of the Central Board of Direct Taxes and the provisions of Section 143(1)(a) itself providing for taking note of the documents/ statements, the statement accompanying the return thus disclosing the facts fully, the income shown could only relate to the one from the property taken on lease, the documents accompanying the return ought to have been adverted to by the Income Tax Officer before passing any order under Section 143(1)(a) to make prima facie adjustment.

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14. Going by the circular dated 24.8.1994 (209 ITR Statute 75) and Section 143(1)(a), we accept the stand of the assessee and allow the Tax Case Appeal and thereby set aside the order of the Tribunal.

Sd/
Asst.Registrar

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Sub Asst.Registrar

mf/ksv

To

1. The Assistant Commissioner of Income Tax,
City Circle (I), Chennai - 34.

2. The Commissioner of Income Tax (Appeals) IX,
Chennai.

3. The Assistant Registrar,
'D' Bench, Sastri Bhavan,
Rajaji Bhavan, Chenani.

1 cc To Mr.N.Muralikumaran, Advocate, SR.56986.

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